

# SL(6)474 – The Agricultural Wages (Wales) Order 2024

## Background and Purpose

The Agricultural Wages (Wales) Order 2024 makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The Order revokes and replaces the Agricultural Wages (Wales) Order 2023 with changes which include increases to the minimum hourly rates of pay for agricultural workers.

Part 2 of the Order provides that agricultural workers are to be employed subject to terms and conditions set out in Parts 2-5 of the Order, and specifies the different grades and categories of agricultural worker.

Part 3 makes provision about:

- minimum rates of remuneration;
- accommodation offset allowance;
- allowance for a dog;
- on-call allowance;
- night work allowance; and
- birth and adoption grants.

Part 4 provides for an entitlement to agricultural sick pay in specified circumstances.

Part 5 makes provision about an agricultural workers entitlement to time off, including rest breaks, daily rest, and weekly rest period. Provision is also made about an agricultural worker's annual leave year and their entitlement to annual leave, holiday pay and payment in lieu of annual leave. This Part also makes provision for an agricultural worker's entitlement to paid bereavement leave.

Part 6 contains revocation and transitional provision.

## Procedure

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd.

The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.



## Technical Scrutiny

The following 18 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In the Table of Contents, the entries for articles 5 to 9 (which relate to the different grades of agricultural worker) differ from the headings found above these articles in the Order.

### **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 2(1), the following definitions are not listed in the correct place according to alphabetical order in the English and Welsh texts of this Order—

- a) in the English text, “agriculture” should be listed after “agricultural worker” and “the national minimum wage” should be listed after “hours”;
- b) in the Welsh text, “cyflogaeth” should be listed after “cyflog wythnosol arferol”.

In this regard, the definite article is ignored for the purpose of ordering the definitions (see Writing Laws for Wales (“WLW”) 4.15(1) and (2)).

Similarly, in article 22(4), the definitions of “qualifying days” and “qualifying hours” have not been listed in alphabetical order in the interpretation provision. In addition, the corresponding language definitions should be included in brackets and italics after the definitions. Finally, there should not be a conjunction “and” between the definitions in the list.

### **3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 2(1), the terms “birth and adoption grant”, “night work”, “normal weekly pay”, “on-call”, and “output work” are all defined as having a meaning for this Order. But all these terms are only used in a single article in the Order. Therefore, those terms should be defined in an interpretation provision within the same article in which they are used.

### **4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 2(1), in the definition of “child”, the phrase “will” is used when appearing to make a declaratory statement about the meaning of that term – “A child will be the child of an agricultural worker if...”. But the Welsh Government’s drafting guidelines state that legislation should avoid using “will” for declaratory statements and that the present indicative should be used in such statements (see WLW 3.14(5)).



## **5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 2(1), in the definition of “employment”, it is not necessary to state that “employed” and “employer” should be construed accordingly due to the effect of section 9 of the Legislation (Wales) Act 2019.

Also in article 2(1) there is a definition of “the national minimum wage” for this Order. However, this term is not used in this Order other than in the title of the National Minimum Wage Act 1998. Therefore, this definition does not appear to serve any purpose.

Likewise, in article 2(1), there is a definition of “working time”—

- a) this term is not used in the Order other than in the title of the Working Time Regulations 1998. Therefore, the definition does not appear to serve any purpose;
- b) it is not necessary to state that “work” should be construed accordingly due to the effect of section 9 of the Legislation (Wales) Act 2019. Perhaps “work” should be defined separately if required for this Order and the definition of “working time” is omitted;
- c) there is a slight difference between the English and Welsh text of this definition. At the beginning of paragraph (a), in the Welsh text, “any **time**” has been translated using the same phrase that is used for “any **period**” at the beginning of paragraph (b). It also means that in the Welsh text, the word “time” has been translated differently in the phrase “any **time**” when compared with the words “but does not include **time** spent...” that follow afterwards in paragraph (a) of that definition.

## **6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 2(1), the term “qualifying days” has been defined and given a meaning in this Order. However, this term is also defined with a different meaning in article 22(4) for the purposes of that article alone. Therefore, there should be a signpost in the definition of “qualifying days” in article 2(1) stating “other than in article 22” to explain to the reader where the definition applies in the Order.

## **7. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Article 14 refers to agricultural workers employed before 22 April 2022, which is when the Agricultural Wages (Wales) Order 2022 (S.I. 2022/417 (W. 102)) came into force. This was the date when the first of two Agricultural Wages Orders made in 2022 came into force in relation to Wales. However, should this provision be updated to refer to the Table found in Schedule 1 to the Agricultural Wages (Wales) Order 2023 (S.I. 2023/260 (W. 37)) or is it



correct? (In addition, in the English text, it should state "Schedule 1 to" rather than "of" the Agricultural Wages (Wales) Order 2022.)

**8. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 16(b), the phrase "cannot" is used when imposing a prohibition. But the phrase "must not" is the recommended phrase for use when imposing a prohibition (see WLW 3.13(4)).

**9. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 21(1), the phrase "will not" is used in the provision but the Welsh Government's drafting guidelines state that the use of "will" should be avoided when making declarations – see WLW 3.14(5). The phrase "will" is also used where the words "is to" could be more appropriate in article 38(2)(b) of this Order.

**10. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

The circumstances in which article 22(5) might apply are unclear. This provides provision to allow calculations of amounts of agricultural sick pay "where an agricultural worker has been employed by their employer for less than 8 weeks". However, article 19(a) provides that an agricultural worker will only qualify for agricultural sick pay under this Order if, amongst other things they have been "continuously employed by their employer for a period of at least 52 weeks prior to the sickness absence".

If there are no circumstances where article 22(5) would apply, this provision is unnecessary, as there would no need to provide a mechanism for calculating this payment, as nobody would be entitled to receive it.

Article 19(a) when read alone provides a clear qualification criteria, but the presence of 22(5) in these circumstances may mislead readers into believing that workers with less than 52 weeks service may qualify for a payment, because there is a mechanism to calculate such a payment.

**11. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In article 25(1), in the Welsh text, the translation could be interpreted as limiting the phrase "during a period of sickness absence" to the words "an agricultural worker's contract or their apprenticeship is terminated". Therefore, the Welsh text would be clearer if the phrase "during a period of sickness absence" was repeated after the words that correspond to "or the agricultural worker is given notice that either their contract or their apprenticeship is to be terminated".



**12. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 26(1), the provision states that an employer “**can** recover the overpayment”. But the use of “can” does not appear to be appropriate because the provision is conferring a discretionary legal power to do something rather than referring to a possibility. In which case, “may” should be the term used in this context- see WLW 3.13(3). There is also another provision in article 38(2)(a) where “may” rather than “can” would appear to be more appropriate in the words “worker **can** receive a payment”.

**13. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In article 26(2), there is a slight difference between the English and Welsh text. At the end of the sentence in the English text, it refers to “payment of **the agricultural worker’s** final wages” but the Welsh text has translated the meaning as “payment of **the worker’s** final wages”. The same difference between the English and Welsh text occurs in relation to the term “the agricultural worker” and “the worker” at the end of article 43(2). In this regard, “the agricultural worker” is a defined term in this Order. But the English text is also slightly inconsistent in its approach because in a few other articles the phrase “the worker” is used after a first reference to “the agricultural worker” (see articles 15(2), 19(c), 27(2)(b), 35(4) and 35(5)).

**14. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 41(2), the structure of the provision is incorrect because there is a sub-paragraph (a) but no subsequent sub-paragraphs. Therefore, article 41(2) should have been structured as a single sentence without any sub-paragraphs. The information found in sub-paragraph (a) should have been incorporated into that sentence.

**15. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 42(5), it states that “where **this article** applies” a formula found in that provision should be used to calculate the amount of bereavement leave. But this appears to be incorrect because it should state “where **this paragraph** applies” if it is only referring to circumstances where paragraph (5) applies? In this regard there is another formula found in paragraph (3) of article 42 and that provision does not include the words “where this article applies” in the corresponding place.

**16. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In article 43(1), the term “shall” is used in the words “the agricultural worker **shall** be entitled to an amount...”. However, the Welsh Government’s drafting guidelines state that “shall” should not be used in legislation other than when amending existing legislation as its



meaning can be ambiguous - see WLW 3.14(1). It would have been more consistent with the rest of the provision to use a phrase such as "is [to be]".

Additionally, in article 43(2), there is a reference that is incorrectly described as "in accordance with **article 43(1)**". But it should be correctly described as "in accordance with **paragraph (1)**" because it is referring to another paragraph found within the same article.

**17. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In Schedules 1, 2 and 4, in the shoulder notes, there are other articles in this Order that refer to those respective Schedules which have not been included in those notes. Therefore, the shoulder notes appear to be incomplete for those Schedules.

**18. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In Schedule 4, in the Table, in the third column under the heading "Northern Ireland", in the bottom row, there is a difference between the English and Welsh text. The English text refers to a "Higher **Level** Apprenticeship" at Level 4, but the Welsh text has translated the meaning as "Higher Apprenticeship" at Level 4. We believe the English text to be correct because "Higher Level Apprenticeship" or "HLA" is a qualification in Northern Ireland that differs from a "Higher Apprenticeship".

Additionally, in Schedule 4, should the existing heading "Table" be changed to "Table 1" and another heading "Table 2" be included for the following table "Equivalent qualifications under the European Qualifications Framework ('EQF')" in that Schedule?

## Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

**19. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

The Order came into force on 1 April 2024, less than 21 days after it was laid on 19 March 2024. In a letter to the Llywydd, dated 19 March 2024, the then Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS stated as follows:

*"Finalisation of the 2024 Order took longer than anticipated due to the simplification amendments necessitating lengthy legal scrutiny to ensure the correct legal effect was maintained.*

*The Panel's intention is for the 2024 Order to come into force on 1 April 2024 so as to align the Agricultural Minimum Wage increases with the National Minimum Wage increases which will also take effect on that date.*



*Until the 2024 Order comes into force, agricultural workers in Wales will continue to be subject to the 2023 Order. To minimise disruption and ensure workers are paid in accordance with the minimum rates agreed by the Panel, it is proposed the making of the 2024 Order will not adhere to the 21 day convention so as to enable it to come into force on 1 April.*

*Not adhering to the 21 day convention is considered necessary and justifiable in light of the unavoidable circumstances that have delayed the process. I also believe reducing any further delay in bringing uplifted agricultural wage rates into force is justified on the basis it will minimise the length of time agricultural workers covered by the Agricultural Minimum Wage are disadvantaged in relation to their pay awards and make compliance easier for agricultural employers."*

## **Welsh Government response**

A Welsh Government response is required.

## **Committee Consideration**

The Committee considered the instrument at its meeting on 22 April 2024 and reports to the Senedd in line with the reporting points above.

